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SUBJECT: ICC INDICTMENTS: THE TIMING IS ALL WRONG SAY SUDANESE
SCHOLARS AND AFRICAN DIPLOMATS

¶1. (SBU) SUMMARY: As Sudan awaits a decision by the International Criminal Court (ICC) on whether to issue an arrest warrant for Sudan's President Bashir, Sudanese scholars and African diplomats in Khartoum we have spoken with predictably believe that while atrocities have been committed in Darfur, the present time is too sensitive to pursue such a high profile and dramatic action against Sudan's President. They believe the indictments may have pushed the regime to try and forestall ICC action by seeking a solution on Darfur - or at least, to make the appearance of doing so. However, our interlocutors agree that an ICC decision to issue an arrest warrant for President Bashir risks throwing Sudan into turmoil and renewed violence, with dire implications for the North-South Comprehensive Peace Agreement (CPA) as well. END SUMMARY.

INDICTMENTS WARRANTED - BUT NOW IS NOT A GOOD TIME

¶2. (SBU) Poloff spoke in recent days to two Sudanese political science professors and to two African diplomats from bordering states. All agree that President Bashir probably deserves to be brought to justice for his role in Darfur. However, they also argue - unanimously and predictably - that the ICC action comes at a very inopportune time, and an arrest warrant should not be issued while Bashir serves as president. They say the ICC indictments have painted Bashir into a corner - along with everyone else working for peace in Sudan.

¶3. (SBU) In a conversation with the CDA, Ethiopian Ambassador Ali Abdo Sulieman said his country, as part of the AU, had spoken out against the ICC indictment, because it unnecessarily complicates the delicate political situation inside Sudan. The Kenyan DCM, Lindsay Kiptiness agreed, calling the indictments "ill timed;" the ICC prosecutor obviously did not take into account the consequences on the ground in Sudan, he said. In fact, the Kenyan Government issued a statement against the indictments. Kiptiness cited a Kenyan proverb that it is better to sacrifice one sheep than risk losing the whole flock - in other words, it is preferable to allow Bashir to get away with his crimes than risk provoking a flare-up of violence. The Kenyan government believes atrocities have been committed in Darfur, but justice must be pursued peacefully - even it takes another 15 years, and not by taking the rash step of arrest warrants. Kiptiness said Bashir could be brought to trial after he leaves office.

¶4. (SBU) Dr. Mukhtar al Assam, a political science professor at the University of Khartoum (and regular contributor of commentary to Khartoum newspapers) told poloff that the situation now is "very serious for Sudan" as it awaits an ICC decision. The ruling NCP knows that other African countries are helpless to get them out of this predicament. (Note: in this regard, the Kenyan DCM told us that even though the AU and IGAD countries are giving Bashir vocal support, the member governments have to deal with the fait accompli of the indictment, and can't ignore it in their dealings with Sudan.

End Note.) The NCP is hoping that the Security Council will vote to postpone the decision; "that's the best they can hope for," al Assam said. Otherwise, "our only hope is that the three judges do not uphold the indictment."

15. (SBU) Dr. Adlan al-Hardeloo, another Khartoum University political science professor, largely agreed with his colleague's assessment. He characterized the ICC indictment as "morally correct" in that "it seeks justice for those involved in the atrocities" in Darfur. However, "politically, it is wrong - the timing is wrong. It will just lead to further complications for the peace process," which is bogged down on a number of very sensitive issues right now, including Abyei, UNAMID deployment, and formation of the National Electoral Commission and subsequent planning for elections.

ICC ACTION PUSHES REGIME TO SEEK DARFUR SOLUTION

16. (SBU) Our interlocutors agree that the ICC crisis at least seems to have had the positive effect of pushing Bashir and the NCP to pull out all the stops in looking for a solution to Darfur. Professor Al Assam said the ICC action has left the NCP anxiously casting about for a fix. The party "wants to send a message to the whole world" by finally showing good faith in the search for peace, he explained. However, he cautioned, the situation is not now amenable to a solution. Many of Darfur's armed groups see that the ICC indictment has left Bashir vulnerable, and consequently are now even less interested in making the necessary concessions for a peace agreement. Even if the GNU were to want to accede to what the rebels want, the rebels themselves are unable to agree on demands.

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17. (SBU) Hardeloo is somewhat more optimistic about the indictment's prospects for Darfur. The fact of the indictments is causing Sudan's leadership to deal with Darfur more constructively. Bashir has already shown more flexibility on Darfur. However, Hardeloo said, it is unclear whether Bashir's stance is simply a tactic, or whether it represents a genuine change of policy. If the international community is able to delay ICC action, the resulting situation could be very conducive to a solution on Darfur. The country's only option is to press for a delay of the arrest warrants, to work for a quick solution to the Darfur problem, to address the demands of Darfuris, and to implement the letter and spirit of the CPA, particularly the reform of the media and security laws in a push for a real transition to democracy. The political jockeying that will take place in pursuing a Darfur settlement "could even lead to a genuine, inclusive national unity government," he said.

18. (SBU) In particular, Hardeloo said the government must come up with a concrete plan for Darfur - but he agreed with al Assam that the ICC decision has just stiffened the inflexibility of the Darfur rebels. Also, the rebels are too divided among themselves to agree on a settlement. One solution the GNU may try would be to grant Darfuris their own region, and then create another vice presidency for Darfur - but Darfuri leaders would never agree on who gets to fill that position, the professor said.

POLITICAL IMPLICATIONS FOR LEADERSHIP

19. (SBU) The two political science professors disagree to some extent on the implications for Sudan's president of an ICC arrest order. Al Assam believes that the NCP is too frightened to consider replacing Bashir - even though the present situation would seem to provide an excellent opportunity to show Bashir the door. There is no one available on whom the NCP could agree to take his place. If an arrest warrant is issued, al Assam speculated that the NCP could ask Bashir to step down, but, he added, "Bashir is not without friends." Asked what the alternatives to Bashir are, the professor shook his head and said "the only alternatives to Bashir are the ethnic rebels of Darfur - and they're even worse!"

¶10. (SBU) By contrast, Professor Hardeloo argues that the ICC actions have ended up strengthening the regime. Moreno-Ocampo's charges and request for an arrest warrant have united Sudanese behind Bashir, despite the fact that "a majority of people in Sudan hate this regime - it has done many bad things; they have no legitimacy," he said. Many of Sudan's political forces have rejected the referral to the ICC, not because they like Bashir, "but because the Sudanese people are very sensitive to foreign interference," Hardeloo said. The Government has been successful at encouraging the public to view the threat to the President from the ICC as "an attempt at foreign conquest" - especially on the part of the U.S. Arguments that the U.S. is not involved with the ICC are not convincing to Sudanese, he said.

¶11. (SBU) Kenyan DCM Kiptiness disagreed with Hardeloo's assessment. He said his impression, from talking with Sudanese, is that a majority of Sudanese actually support a possible ICC arrest warrant against Bashir, and feel that "it is a good thing," he said.

DIRE CONSEQUENCES OF AN ICC ARREST ORDER

¶12. (SBU) Our academic and diplomatic contacts suspect probable dire consequences of an ICC decision to issue an arrest warrant for Bashir. Al Assam fears such a decision will send the country spiraling into instability and renewed violence. "The threat is very imminent," he said. Hardeloo agrees with his colleague's gloomy assessment. An ICC decision to issue such a t warrant could lead to the destruction of the entire political system in Darfur, including a collapse of the government, he said. In the ensuing chaos, he predicted, Darfur could come under the control of religious extremists. Another casualty would be the "destruction of the whole peace apparatus," including the CPA process. The NCP has promoted this "nightmare scenario" of bad behavior by hosting visits by the terrorist groups Hamas and Hizballah offering Sudan political support in its struggle with the ICC.

¶13. (SBU) COMMENT: Our panel of professors and African diplomats expressed unanimity: while President Bashir deserves to stand trial for crimes against humanity in Darfur, an ICC decision to issue an arrest warrant would upset the various chess boards at play in the

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country. Others disagree - Ugandan President Museveni expressed support for the ICC and Darfuri IDP leaders told CDA Fernandez on August 11 that they believe the indictment was long overdue. No one is sure of what the exact chain of events would be, but many agree the likely consequences are instability, potential chaos, and an upsurge of violence. Behind these predictions is an uncertainty about just what Bashir might do and how far he might go to save his own skin, but no one believes he would behave like a statesman and step aside for the good of the country. Of course, it is to Bashir's advantage to encourage those uncertainties, among both Sudanese as well as the international community. The ICC predicament, or "crisis" as it is often called here, has left the Sudanese feeling rather powerless: the most the regime can do is make nice on Darfur, and hope the international community notices. The regime has done precious little thus far, apart from President Bashir's empty promises in Darfur and numerous diplomatic initiatives. This won't be enough, and time is running out.

FERNANDEZ